

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB

AUG 5, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re The Pennsylvania Globe Gaslight Company

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Serial No. 75/074,295

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William L. Feeney and John Kerins of Kerkan, Stoweel,  
Kondracki & Clarke for applicant.

Thomas W. Wellington, Trademark Examining Attorney, Law  
Office 104 (Sidney Moskowitz, Managing Attorney).

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Before Hanak, Walters and Wendel, Administrative Trademark  
Judges.

Opinion by Walters, Administrative Trademark Judge:

The Pennsylvania Globe Gaslight Company has filed a  
trademark application to register on the Supplemental  
Register the mark REPLICA GASLIGHTS for "outdoor and indoor  
gas and electric lighting fixtures; posts to support gas  
and electric lighting fixtures; gas mantles."<sup>1</sup>

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<sup>1</sup> Serial No. 75/074,295, in International Class 11, initially filed on  
the Principal Register on March 18, 1996, based on a bona fide  
intention to use the mark in commerce. On March 11, 1997, applicant  
filed an amendment to allege use, and specimens, alleging dates of

This application was originally filed as an intent-to-use application on the Principal Register. The Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of the goods identified in the application. Applicant responded by filing its amendment to allege use and amending its application to seek registration on the Supplemental Register. The Examining Attorney then refused registration on the ground that the mark is the generic name of the goods identified in the application.

The Examining Attorney has finally refused registration, under Section 23 of the Trademark Act, 15 U.S.C. 1091, on the ground that the subject matter of this application, as used in connection with the identified goods, is generic and, thus, incapable of identifying applicant's goods and distinguishing them from those of others.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, and an oral hearing was held.

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first use and first use in commerce as of July 1, 1995. On the same date applicant filed an amendment seeking registration on the Supplemental Register.

With respect to genericness, the Office has the burden of proving genericness by "clear evidence" thereof. *In re Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods in question. *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Our primary reviewing court has set forth a two-step inquiry to determine whether a mark is generic: First, what is the category or class of goods at issue? Second, is the term sought to be registered understood by the relevant public primarily to refer to that category or class of goods? *H. Marvin Ginn Corporation v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986).

The Examining Attorney contends that the evidence of record establishes that the class of goods is "replicas of gaslights," i.e., "gaslights which have been produced to replicate historic or antique gaslights"; that it is "common for the public to use the term 'replica' generically to refer to various products and, in particular, to refer to the identified goods"; that it is common for goods that have been replicated to be referred

to, generically, by the name of the goods preceded by the word "replica"; and that REPLICA GASLIGHTS is one generic name for lighting fixtures that are replicas of gaslights. The Examining Attorney submitted excerpts of articles from the LEXIS/NEXIS database in support of his position.

Applicant argues that the word "replica" is vague and that "REPLICA GASLIGHTS does not indicate what it is a replica of ... [h]ow can one assume that [it] does not refer to a gaslight that replicates plants, animals or something else." Additionally, applicant submitted copies, from an unidentified source, of two registrations for marks including the word "replica" for goods wholly unrelated to the goods herein. Applicant argues that, since only one of these registrations includes a disclaimer of REPLICA, these registrations indicate that the Patent and Trademark Office "has not previously considered [replica] to be generic in contexts very similar to the present application."<sup>2</sup>

Applicant claims, further, that the phrases evidenced in the excerpts submitted by the Examining Attorney, "replica

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<sup>2</sup> The registrations are for the mark REPLICA for hip transplant prostheses and FAIRWAY REPLICAS for sculpted plastic putting greens (REPLICA disclaimed). As the Examining Attorney did not object to these third-party registrations in the form submitted and, in fact, addressed the merits of applicant's contentions in this regard, we consider this evidence to be part of the record. However, applicant's arguments pertaining to these two third-party registrations are unpersuasive as each case must be decided on the facts therein and, in particular, genericness must be determined in relation to the recited goods.

of a gaslight" or "gaslight replica" are not relevant to the mark herein, implying that the connotation is different. Similarly, applicant argues that excerpts with examples of "replica" preceding other product names (such as lamp or automobile) are inapposite; and that those terms are either generic due to the specific use in those fields or used improperly.

It is clear from the record, and applicant does not dispute, that the word "gaslight" is a generic term for a category of lighting fixtures powered by gas and that such goods are encompassed by the goods identified in the application. The noun "replica" is defined in the record as "any close reproduction or copy."<sup>3</sup> The LEXIS/NEXIS excerpts of record show the word "replica" preceding the names of various products (e.g., "replica automobiles," "replica lamps," "replica chandeliers" and "replica gas pipes") to indicate that the products are reproductions of earlier or antique models of those products. The excerpts of record also show the word "replica" used in connection with goods identified as "gaslights" to indicate that the products are reproductions in the style of the gas-powered

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<sup>3</sup> *Webster's New World Dictionary of the American Language*, 1979.

lights common at the turn of the century and earlier.<sup>4</sup>

These excerpts most commonly use the phrases "replicas of gaslights" or "gaslight replicas," although one excerpt uses the phrase "replica gaslights."<sup>5</sup>

In its brief applicant appears to concede that the phrases "gaslight replica"<sup>6</sup> and "replica of a gaslight"<sup>7</sup> are generic names for the goods identified in the application. At the oral hearing, applicant's attorney expressly conceded that these two terms are "the apt descriptive names" for such goods. We find that the evidence of record

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<sup>4</sup> "... it might not be a good idea to push the parallel between the **replica gaslights** in the new subdivision and the film, which is something of a replica, too" [*The Boston Globe*, October 20, 1995]; "...electric and telephone wires have been buried and **replicas of 19<sup>th</sup> century gaslights** have been installed" [*Arkansas Democrat-Gazette*, April 8, 1995]; "[t]he development's streets will feature **replicas of turn-of-the-century New England gaslights**" [*Chicago Tribune*, June 16, 1988].

<sup>5</sup> It is unclear in most instances whether the product referenced is powered by gas or electricity, but this distinction is immaterial as it appears that replicas of gaslights may be powered by either gas or electricity and the identified goods in the case before us encompass both gas and electric fixtures.

<sup>6</sup> Referring to the LEXIS/NEXIS evidence, applicant states in its brief (p.2-3), "... some of the articles use the expression 'gaslight replica,' 'gas light replicas,' etc., but that is not really relevant to the present mark. Considering that 'replica' means 'copy,' the expression 'gaslight replicas' means 'gaslight copies.' 'Gaslight copies' would arguably not be susceptible to registration on the supplemental register because it is clear that this refers to copies of a gaslight."

<sup>7</sup> Referring to one of the LEXIS/NEXIS articles, applicant states in its brief (p. 2), "the one article ... referred to 'replicas of 19<sup>th</sup> century gaslights,' making it clear that reference is being made to a copy of the a (*sic*) 19<sup>th</sup> century gaslight. However, most importantly, the present mark is not 'replicas of a gaslight' or similar expression. In other words, the examples in the form of 'replica of a gaslight' or 'replica of a <generic name of product>' are not really relevant to the present 'REPLICA GASLIGHTS' mark."

supports this conclusion. The evidence also supports the conclusion that the phrase REPLICA GASLIGHTS is, similarly, a name for electric and/or gas light fixtures that are reproductions of antique or historic models or styles of gaslights. This class or category of goods is encompassed by the identification of goods in this application. We see nothing in this record or in the ordinary definitions of the words "replica" and "gaslights" that would indicate that the public would perceive REPLICA GASLIGHTS as having a connotation that differs from the connotation of "gaslight replica" or "replica of a gaslight." To the contrary, the evidence indicates that it is not uncommon for the public to see in print the word "replica" immediately preceding the name of the product to which it refers. Further, there is no evidence in the record to indicate that such a construction would be inappropriate, or understood as having a different connotation, in relation to gaslights. Thus, we find that the evidence supports the conclusion that the relevant purchasers understand the phrase REPLICA GASLIGHTS as referring to this category of goods.

*Decision:* The refusal to register on the Supplemental Register on the ground that the applied-for mark is generic in connection with the identified goods is affirmed.

E. W. Hanak

C. E. Walters

H. R. Wendel  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board